* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

1. W.P.(C) 2835/2000

Smt. Rakhi Rughwani & Ors. ..... Petitioners through
Mr. Ravinder Sethi, Sr.Advocate
with Mr. Rajeev Kumar Ghawana
and Mr.Puneet Sharma, Advocates

versus

Union of India & Ors. ..... Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Advocate
with Ms.Shobhana Takiar, Advocate
for DDA

W I T H

2. W.P.(C) 6689/1998

Raj Singh & Ors. ...Petitioners through
Mr. O.N. Vohra, Sr. Advocate
with Ms. Shradha Bhargav, Adv.

versus

Union of India & Ors. ..Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with
Ms.Shobhana Takiar, Adv. for DDA
Mr. Gaurav Sarin, Advocate with
Ms.Charul Sarin, Advocate for DDA

W I T H

3. W.P.(C) 3938/1996

Prahlad Vihar Resident Assn. ... Petitioner through
Mr.Amit Goel and
Mr.V.K.Sharma, Advocates

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with
Ms.Shobhana Takiar, Adv. for DDA

W I T H

4. W.P.(C) 4148/1996

Gayatri Devi Aggarwal ...Petitioner through
None

versus

Union of India & Ors. ...Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Ms.Sangeeta Chandra with
Mr.Deepak Khadaria, Adv. for DDA

W I T H

5. W.P.(C) 4701/1996

Bhagwan Singh & Ors. ...Petitioners through
None

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Advocate
with Ms.Shobhana Takiar, Advocate
for DDA

W I T H

6. W.P.(C) 1183/1997

Prem Lata & Ors. ...Petitioners through None

versus

Union of India & Ors. .....Respondents through Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD Mr. Valmiki Mehta, Sr.Adv. with Ms.Shobhana Takiar, Adv. for DDA

W I T H

7. W.P.(C) 1406/1997

Khandalwal Papers & Anr. ...Petitioners through None

versus

Union of India & Ors. .....Respondents through Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD Mr. Valmiki Mehta, Sr.Adv. with Ms.Shobhana Takiar, Adv. for DDA

W I T H

8. W.P.(C) 1426/1998

Sukbir Singh .....Petitioner through Ms.Madhu Tevatia & Ms.Sidhi Arora, Advocates

versus

Union of India & Ors. .....Respondents through Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD Mr. Valmiki Mehta, Sr.Adv. with Ms.Shobhana Takiar, Adv. for DDA

W I T H

9. W.P.(C) 1649/1998

Sunita Aggarwal & Ors ....Petitioners through None

versus

Union of India & Ors. .....Respondents through Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD Mr. Valmiki Mehta, Sr.Adv. with Ms.Shobhana Takiar, Adv. for DDA

W I T H

10. W.P.(C) 6710/1998

Harpreet Singh & Anr. ..Petitioners through Mr. O.N. Vohra, Sr. Advocate with Ms. Shradha Bhargav, Adv.

versus

Union of India & Ors. ...Respondents through Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD Ms.Sangeeta Chandra with Mr.Deepak Khadaria, Adv. for DDA

W I T H

11. W.P.(C) 1638/2000

Sunil Goel & Ors. ...Petitioners through Mr. Sandeep Mittal, Advocate

versus

Union of India & Ors. .....Respondents through Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD Mr. Valmiki Mehta, Sr.Advocate with Ms.Shobhana Takiar, Advocate for DDA

W I T H

12. W.P.(C) 1742/2000

Jagdish Baherwani & Ors. ...Petitioners through
Mr. Sandeep Mittal, Advocate

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with
Ms.Shobhana Takiar, Adv. for DDA

W I T H

13. W.P.(C) 2040/2000

Prahlad Vihar Residents Welfare ...Petitioner through
Mr.Amit Goel and
Mr.V.K.Sharma, Advocates

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with
Ms.Shobhana Takiar, Adv. for DDA

W I T H

14. W.P.(C) 2199/2000

Krishan Kumar Gupta & Ors. ..... Petitioners through
Mr. Ravinder Sethi, Sr.Adv. with
Mr.Rajiv Kumar Ghawana, Adv.

versus

Lt.Governor & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with
Ms.Shobhana Takiar, Adv. for DDA

W I T H

15. W.P.(C) 2326/2000

Bhupinder Singh & Ors. ...Petitioners through
Mr. Sandeep Mittal, Advocate

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with
Ms.Shobhana Takiar, Adv. for DDA

W I T H

16. W.P.(C) 2327/2000

S.K.Garg & Ors. ...Petitioners through
Mr. Sandeep Mittal, Advocate

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with
Ms.Shobhana Takiar, Adv. for DDA

W I T H

17. W.P.(C) 2532/2000

Darshan Singh & Ors. .....Petitioners through
Mr.Devinder Chaudhary, Adv.

versus

Lt.Governor & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with
Ms.Shobhana Takiar, Adv. for DDA

W I T H

18. W.P.(C) 2570/2000

Mohinder Pal ...Petitioner through
Mr. Sandeep Mittal, Advocate

versus

Union of India .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with
Ms.Shobhana Takiar, Adv. for DDA

W I T H

19. W.P.(C) 2904/2000

Deep Vihar Welfare Society ..... Petitioners through
Mr. Ravinder Sethi, Sr.Advocate
with Mr.Rajeev Kumar Ghawana
and Mr.Puneet Sharma, Advocates
Mr. S.K. Rout with Mr. S.Palo,
Advocates for the Applicant

versus

Lt.Governor of Delhi .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with
Ms.Shobhana Takiar, Adv. for DDA

W I T H

20. W.P.(C) 2917/2000

Prem Adhar Memorial Charitable Trust ..Petitioner through
Mr. S.K. Rout with Mr. S.Palo, Advs

versus

Govt. of Delhi & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L

& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Advocate
with Ms.Shobhana Takiar, Advocate
for DDA

W I T H

21. W.P.(C) 3075/2000

Krishan Colony Welfare Association
..... Petitioners through
Mr. Ravinder Sethi, Sr.Advocate
with Mr.Rajeev Kumar Ghawana
and Mr.Puneet Sharma, Advocates

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with
Ms.Shobhana Takiar, Adv. for DDA

W I T H

22. W.P.(C) 3082/2000

Krishna Kaushik. ...Petitioner through
None

versus

Lt. Governor of Delhi & Ors.
.....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Advocate
with Ms.Shobhana Takiar, Advocate
for DDA

W I T H

23. W.P.(C) 3410/2000

S.Trilok Singh ..... Petitioner through
Mr. S.K. Rout with Mr. S.Palo, Advocates

versus

Union of India .....Respondents through
Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with Ms.Shobhana Takiar, Adv. for DDA

W I T H

24. W.P.(C) 4375/2000

Anil Kumar Thapar & Ors. ..... Petitioners through
Mr. S.K. Rout with Mr. S.Palo, Advocates

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD
Mr. Valmiki Mehta, Sr.Advocate with Ms.Shobhana Takiar, Advocate for DDA

W I T H

25. W.P.(C) 5276/2000

Ram Kala & Ors. ..... Petitioners through
Mr. Ravinder Sethi, Sr.Advocate with Mr.Rajeev Kumar Ghawana and Mr.Puneet Sharma, Advocates

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD
Mr. Valmiki Mehta, Sr.Adv. with Ms.Shobhana Takiar, Adv. for DDA

W I T H

26. W.P.(C) 5821/2000

Ram Dhari Jindal Memorial Trust. ...Petitioner through
Mr. Ravinder Sethi, Sr.Advocate
with Mr.Rajeev Kumar Ghawana
and Mr.Puneet Sharma, Advocates
Mr. S.K. Rout with Mr. S.Palo,
Advocates

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Advocate
with Ms.Shobhana Takiar, Advocate
for DDA

W I T H

27. W.P.(C) 7181/2000

Brahm Prakash & Ors. ...Petitioners through
None

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Advocate
with Ms.Shobhana Takiar, Advocate
for DDA

W I T H

28. W.P.(C) 8058/2002

Chandra Kanta C. Meshram ...Petitioner through None

versus

Lt.Governor of Delhi & Anr.

.....Respondents through Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD
Mr. Valmiki Mehta, Sr.Advocate with Ms.Shobhana Takiar, Advocate for DDA

W I T H

29. W.P.(C) 1622/2003

Ravi Gupta & Ors.

..... Petitioners through Mr. Ravinder Sethi, Sr.Advocate with Mr.Rajeev Kumar Ghawana and Mr.Puneet Sharma, Advocates

versus

Union of India & Ors. .....Respondents through Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD
Mr. Gaurav Sarin, Advocate with Ms.Charul Sarin, Advocate for DDA

W I T H

30. W.P.(C) 96-97/2004

Sandeep Rana & Anr. ..... Petitioners through Mr. Ravinder Sethi, Sr.Advocate with Mr.Rajeev Kumar Ghawana and Mr.Puneet Sharma, Advocates

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Advocate
with Ms.Shobhana Takiar, Advocate
for DDA

W I T H

31. W.P.(C) 4095-96/2004

Ashok Kumar & Ors. ..... Petitioners through
Mr. Ravinder Sethi, Sr.Advocate
with Mr.Rajeev Kumar Ghawana
and Mr.Puneet Sharma, Advocates

versus

Union of India & Ors. .....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay
Pathak, Advocates for the LAC & L
& B Department & GNCTD
Mr. Valmiki Mehta, Sr.Advocate
with Ms.Shobhana Takiar, Advocate
for DDA

W I T H

32. W.P.(C) 371/2006

Priyavart ..Petitioner through
Mr.V.S.Chauhan with Mr. N.
Chaudhary, Advocates for LR of the
Petitioner

versus

Union of India & Ors.
.....Respondents through
Mr.Sanjay Poddar, Advocate with
Mr.Ramesh Ray and Mr.Sanjay

Pathak, Advocates for the LAC & L & B Department & GNCTD
Mr. Gaurav Sarin, Advocate with Ms.Charul Sarin, Advocate for DDA

W I T H

33. W.P.(C) 5528/2001

Velaxan Kumar ..Petitioner through
Mr. Sanjay Mann, Advocate.

versus

Union of India & Ors.

.....Respondents through
Mr.Sanjay Poddar, Advocate with Mr.Ramesh Ray and Mr.Sanjay Pathak, Advocates for the LAC & L & B Department & GNCTD

Judgment Reserved on : May 3, 2007
Judgment Delivered on : July 9, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE J.P. SINGH

1. Whether reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

J U D G M E N T

VIKRAMAJIT SEN, J.

1. In these petitions a challenge has been laid to the acquisition of large tracts of land in Delhi stated to be required

for Rohini Residential Scheme. The Principal Secretary (PWD/L&B), in her Note dated 15.10.1999 had requested the Hon. Lt. Governor to approve issuance of a Notification under Sections 4, 6 and 17 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act') . An order, also invoking the urgency clause was forwarded for the Lt. Governor's signature. On 27th October, 1999 the Lt. Governor , Delhi passed an order in these words - “I have gone through the records and requirements of the Delhi Development Authority and the draft notification prepared by LAC. I am fully satisfied that the land measuring 2673-07 Bigha in village Shahbad, Daulatpur, 2975-09 Bigha in village Pehladpur Banger, 1178-11 Bigha in village Khera Kalan, 345-02 Bigha in village Khera Khurd, 1223-06 Bigha in village Pansali, is urgently required for a valid purpose, namely for Rohini Residential Scheme under Planned Development of Delhi. In view of the urgency of the scheme, I order that notifications under Sections 4, 6 and 17(1) of the Land Acquisition Act, 1894 be issued immediately”. The Notification in question inter alia states that - “The Lt. Governor, Delhi is satisfied also that provisions of sub-section (1) of Section 17 of the said Act are applicable to this land and is further pleased under sub-section (4) of the said Section to direct that all the

provisions of Section 5(A) shall not apply". Accordingly, the following Notifications/Declarations were also issued from time to time:

1. Notification u/s 4 No. F10(29)/96/L&B/LA/11394 dated 27.10.1999.

Declaration u/s 6 No.F10(29)/96/L&B/LA/20 dated 3.4.2000.

2. Notification u/s 4 & 17 No. F(II)(17)/91-L&B/LA/6518 dated 28.4.1995.

Declaration u/s 6 No.F(II)(17)/91-L&B/LA/7085 dated 26.4.1996

3.Notification u/s 4 & 17 No.F19(29)/96-L&B/LA/UOI/III/14-7-2000.

4.Notification u/s 4 & 17No.F11(76)/2000/L&B/LA/dated 25-1-2002.

Declaration u/s 6 dated 3-12-2002.

All these Notifications/Declarations are sought to be quashed in these writ petitions.

2. The contention of the Petitioners is that the Lt. Governor had not specifically authorised invocation of Section 17 (4) of the stridently Land Acquisition Act and that this is all the more significant since the draft of the Notification placed before him adverts to Section 17(4). According to the Petitioners, the

only inference that can be drawn is that the Lt. Governor did not approve of dispensing with the Petitioners valuable rights to object to the acquisition. The further contention is that since the Petitioners have not been permitted to avail of their rights to file objections under Section 5A and have not been given an opportunity of being heard the entire acquisition should be struck down. It has also been argued on behalf of the Petitioners that even assuming that Section 17(4) need not in terms have to be mentioned by the Lt. Governor while granting his approval to the Scheme and that reference only to Section 17(1) would suffice, the Lt. Governor has not properly exercised his mind in approving the waiver and withdrawal of the Petitioners valuable right under Section 5A of the Act. In other words it is their stance that resort to the emergency provisions contained in Section 17 of the Act were unwarranted and unjustified in the facts of the present case. It will be relevant to record at the threshold that acquisition proceedings stand completed in respect of an overwhelming portion (stated by Mr. Poddar to be as much as 80 per cent) of the subject land, i.e. its possession has been taken over by the Government which has tendered compensation to the erstwhile owners.

INTERPRETATION OF SECTION 17 OF THE LAND ACQUISITION ACT, 1894

3. The interplay between the various provisions of the Land Acquisition Act with which we are presently concerned have been dealt with in minute detail in a plethora of precedents. The following passage from ***Nandeshwar Prasad*** *-vs- The State of U.P.,* [1964] 3 SCR 425 (followed one year later in *Sarju Prasad Sinha -vs- The State of U.P.,* AIR 1965 SC 1763) perspicuously encapsulates the law on the subject, holding that the State Government ought not to have dispensed with adherence to Section 5A in the Notification under Section 4 of the Act:

> The proceedings for acquisition start with a preliminary notification under s. 4. By that notification the Government notifies that land in any locality is needed or is likely to be needed for any public purpose. On that notification certain consequences follow and authority is conferred on an officer either generally or specially by Government and on his servants and workmen to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether the land is adapted for such purpose, to set out the boundaries

of the land proposed, to be taken, and so on. Then s. 5-A provides that any person interested in any land which has been notified in s. 4, may within thirty days of the issue of the notification object to the acquisition of the land or of any land in the locality as the case may be. Every such objection shall be made to the Collector in writing and the Collector has to give the objector an opportunity of being heard. After hearing all objections and after making further inquiry if any, as he thinks fit, the Collector has to submit the case for the decision of the Government together with the record of the proceedings held by him and the report containing his recommendations on the objections. The decision of the Government on the objections is final. Then comes the notification under s. 6, which provides that when the appropriate government is satisfied after considering the report, if any, made under s. 5-A that any particular land is needed for a public purpose, a declaration shall be made to that effect and published in the official gazette. After such a declaration has been made under s. 6, the Collector has to take order for acquisition of land. It is marked out, measured and planned under s. 8 if necessary and notice is given under s. 9 to persons interested. The Collector then holds inquiry under s. 11 and makes an award. After the award is made the Collector has got the power to take possession of the land under s. 16 and the land then vests absolutely in

the Government free from all encumbrances.

It will be clear from this scheme that compliance with the provisions of s. 5-A is necessary before a notification can be issued under s. 6. As soon as the preliminary notification is issued under s. 4, the officer authorised by Government may enter upon the land to survey it and to do all other necessary acts to ascertain whether the land is adapted for the purpose for which it is to be acquired, and this action, if taken, will give sufficient notice to those interested to object. If objections are made the Collector will consider those objections and make his recommendation thereon in his report to Government. If no objections are made the Collector will report that no objection has been made and the Government then proceeds to issue a notification under s. 6. In either case however, the Collector has got to make a report with his recommendations on the objections if they are filed or inform the Government that there are no objections filed in pursuance of the notification under s. 4 and it is thereafter that the Government is empowered under s. 6 to issue a notification. This, as we have said, is the usual procedure to be followed before the notification under s. 6 is issued. To this usual procedure there is however an exception under s. 17, and that is why in s. 6 we find the words "if any" in the clause "after considering the report, if

any, made under s. 5A". When action is taken under s. 17(4), it is not necessary to follow the procedure in s. 5-A and a notification under s. 6 can be issued without a report from the Collector under s. 5-A.

.....

It will be seen that s. 17(1) gives power to the Government to direct the Collector, though no award has been made under s. 11, to take possession of any waste or arable land needed for public purpose and such land thereupon vests absolutely in the Government free from all encumbrances. If action is taken under s. 17(1), taking possession and vesting which are provided in s. 16 after the award under s. 11 are accelerated and can take place fifteen days after the publication of the notice under s. 9. Then comes s. 17(4) which provides that in case of any land to which the provisions of sub-s. (1) are applicable, the Government may direct that the provisions of s. 5-A shall not apply and if it does so direct, a declaration may be made under s. 6 in respect of the land at any time after the publication of the notification under s. 4(1). It will be seen that it is not necessary even where the Government makes a direction under s. 17(1) that it should also make a direction under s. 17(4). If the Government makes a direction only under s. 17(1) the procedure under s. 5-A would still have to be followed before a

> notification under s. 6 is issued, though after that procedure has been followed and a notification under s. 6 is issued the Collector gets the power to take possession of the land after the notice under s. 9 without waiting for the award and on such taking possession the land shall vest absolutely in Government free from all encumbrances. It is only when the Government also makes a declaration under s. 17(4) that it becomes unnecessary to take action under s. 5-A and make a report thereunder. It may be that generally where an order is made under s. 17(1), an order under s. 17(4) is also passed; but in law it is not necessary that this should be so.

4. Thirty five years later, their Lordships had garnered support from ***Nandeshwar Prasad*** *which was applied in Union of India -vs-* ***Mukesh Hans****,* (2004) 8 SCC 14, decided on 17-9-2004 without reference to Krishan Lal Arneja (infra). It was emphasised that there must be an application of mind by the appropriate Government to the facts of the case with special reference to the necessity of dispensing with the invaluable opportunity of showing cause and being heard against the acquisition consequent upon a Section 4 Notification. It should be noted that prior to the amendment of the statute in 1923, since the right to file Objections to the proposed expropriation of land was non existent, there was no reason whatsoever to refer to the

dismissal or disposal of Section 5A Objections. It is advisable, if not essential, to keep the annals of the statute in mind while interpreting its sundry sections. Their Lordships had upheld the decision of the Division Bench of this Court and had reiterated the law in these words:

> 29. A careful perusal of the above Section shows that Sub-section (1) of Section 17 contemplates taking possession of the land in the case of an urgency without making an award but after the publication of Section 9(1) notice and after the expiration of 15 days of publication of Section 9(1) notice. Therefore, it is seen that if the appropriate Government decides that there is an urgency to invoke Section 17(1) in the normal course Section 4 (1) notice will have to be published, Section 6 declaration will have to be made and after completing the procedure contemplated under Sections 7 and 8, Section 9(1) notice will have to be given and on expiration of 15 days from the date of such notice the authorities can take possession of the land even before passing of an award.
>
> 30. Sub-section (2) of Section 17 contemplates a different type of urgency inasmuch as it should be an unforeseen emergency. Under this Section if the appropriate Government is satisfied that there is such unforeseen emergency the authorities can take possession of the land even without waiting for the fifteen day period contemplated under Section 9(1).

Therefore, in cases, where the Government is satisfied that there is an unforeseen emergency, it will have to in the normal course, issue a Section 4(1) notification, hold Section 5-A inquiry, make Section 6 declaration, and issue Section 9(1) notice and possession can be taken immediately thereafter without waiting for the period of 15 days prescribed under Section 9(1) of the Act

31. Section 17 (4) as noticed above, provides that in cases where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency as required under Sub-section (1) or (2) of Section 17 it may direct that the provisions of Section 5-A shall not apply and if such direction is given then Section 5-A inquiry can be dispensed with and a declaration may be made under Section 6 on publication of Section 4(1) notification and possession can be made.

32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5A inquiry which indicates

that the Legislature intended the appropriate government to apply its mind before dispensing with Section 5A inquiry. It also indicates that mere existence of an urgency under Section 17 (1) or unforeseen emergency under Section 17 (2) would not by itself be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the Legislature then the latter part of Sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17 (1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not the language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in each and every case when there is an urgency contemplated under Section 17 (1) and unforeseen emergency contemplated under Section 17 (2) exists that by itself would not contain the need for dispensing with Section 5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that

it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5 A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Section 17 (1) and (2) of the Act.

(underlining added)

33. An argument was sought to be advanced on behalf of the appellants that once the appropriate Government comes to the conclusion that there is an urgency or unforeseen emergency under Section 17 (1) and (2) the dispensation of enquiry under Section 5-A becomes automatic and the same can be done by a composite order meaning thereby that there is no need for the appropriate Government to separately apply its mind for any further emergency for dispensation with an inquiry under Section 5-A. We are unable to agree with the above argument because sub-section (4) of Section 17 itself indicates that the "government *may direct* that the provisions of Section 5-A shall not apply" (emphasis supplied) which makes it clear that not in every case where the appropriate Government has come to the conclusion that there is urgency and under sub-section (1) or unforeseen emergency under sub-section (2) of Section 17, the Government will ipso facto have to direct the dispensation of the inquiry. For this we do find support from a judgment of this Court in the case of

Nandeshwar Prasad v. The State of U.P., (1964) 3 SCR 425:AIR 1964 SC 1217 wherein considering the language of Section 17 of the Act which was then referable to waste or arable land and the U.P. Amendment to the said section, this Court held thus :

"It will be seen that Section 17(1) gives power to the Government to direct the Collector, though no award has been made under Section 11, to take possession of any waste or arable land needed for public purpose and such land thereupon vests absolutely in the Government free from all encumbrances. If action is taken under Section 17 (1), taking possession and vesting which are provided in Section 16 after the award under Section 11 are accelerated and can take place fifteen days after the publication of the notice under Section 9. Then comes Section 17(4) which provides that in case of any land to which the provisions of sub-section (1) are applicable, the Government may direct that the provisions of Section 5A shall not apply and if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4(1). It will be seen that it is not necessary even where the Government makes a direction under Section 17(1) that it should also make a direction under Section 17(4). If the Government makes a direction only under Section 17(1) the procedure under Section 5-A would still have to be

followed before a notification under Section 6 is issued, though after that procedure has been followed and a notification under Section 6 is issued the Collector gets the power to take possession of the land after the notice under Section 9 without waiting for the award and on such taking possession the land shall vest absolutely in Government free from all encumbrances. It is only when the Government also makes a declaration under Section 17(4) that it becomes unnecessary to take action under Section 5A and make a report thereunder. It may be that generally where an order is made under Section 17(1), an order under Section 17(4) is also passed; but in law it is not necessary that this should be so. It will also be seen that under the Land Acquisition Act an order under Section 17(1) or Section 17(4) can only be passed with respect to waste or arable land and it cannot be passed with respect to land which is not waste or arable and on which buildings stand." (emphasis supplied)

34. A careful reading of the above judgment shows that this Court in the said Nandeshwar Prasad case has also held that there should be an application of mind to the facts of the case with special reference to this concession of Section 5-A inquiry under the Act.

35. At this stage, it is relevant to notice that the limited right given to an owner/person interested under Section 5-A of the Act to object to

the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Section 17(4) of the Act. The object and importance of 5A inquiry was noticed by this Court in the case of Munshi Singh and Ors. v. Union of India, (1973) 2 SCC 337, wherein this Court held thus:-

"7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. ...The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections . It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A."

36. It is clear from the above observation of this Court that right of representation and hearing contemplated under Section 5-A of the Act is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made.

Therefore, in our opinion, if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5 A.

37. We will now refer to the facts of the present case. We make it clear that this consideration of facts by us is not for the purpose of finding out whether the stated public purpose is in reality a public purpose or not, nor is it for the purpose of finding out whether there was an urgency as contemplated under Section 17(1) of the Act, but limited to the question of whether there was any material available before the Lt. Governor pursuant to whose order Section 4(1) notification stated that Section 5-A inquiry is dispensed with. Since formation of an opinion and application of mind cannot be assessed except by looking into the proceedings which culminated in the impugned order, we intend considering only such facts as are necessary for this limited purpose. The facts of the present case as found from the records shows that the Anjuman-Saire-e-Gul-Faroshan the committee that organises this festival was using some land in village Mehrauli for conducting its concluding ceremony. It is for this purpose it sought 4000 sq. yards of land in Khasra Nos. 1151/3 (new) and 1665 (old) of the said village. It is also found from the record that ever since the revival of the festival the

concluding programme was being continued in a piece of land situated in the said Khasra of Mehrauli village which is now sought to be acquired along with certain other lands. There is no material on record to show that either the said festival has been discontinued for want of land or the owners of the land where the festival has its concluding ceremony are preventing the utilisation of that land for the said purpose. We have also noticed hereinabove that an earlier attempt to acquire 40 bighas of the land for the very same purpose was allowed to be lapsed by the authorities concerned by efflux of time which was also a relevant factor to be taken note of by the Lt. Governor when he took the decision to dispense with the Section 5-A inquiry but the same was not placed before him. These facts coupled with the findings of the High Court that in almost all the notings in the file there is no reference to the need for invoking Section 17(4), indicates that the Lt. Governor was not apprised of all the necessary and relevant facts before he took the decision in question. Therefore, in our opinion, the findings of the High Court that the decision of the Lt. Governor to dispense with the Section 5-A inquiry suffered from the vice of non-application of mind has to be upheld. For the reasons stated above, these appeals fail and are dismissed.

5. We need to clarify that the present Notification as well as the ***Mukesh Hans*** Notification specifically state that the Lt. Governor is of the opinion that provisions of sub-section (1) of Section 17 of the Act are applicable to the acquisition and that the provisions of Section 5A of the Act would not apply. Simultaneously, a Declaration under Section 6 of the Act as well as the Notification under Section 7 of the Act had been published. Logically, if the Apex Court was of the opinion that the Lt. Governor had perforce to take a decision under Section 17 (4) of the Act, the Notification could have been struck down on that short ground alone. Instead, however, their Lordships perused the file to satisfy themselves with regard to the appropriateness and legality of the Lt. Governor's decision under Section 17(1). In other words their Lordships did not consider it essential and mandatory that the Lt. Governor's opinion should have been predicated particularly on the provisions of Section 17 (4). In the event, their Lordships struck down the Notification on the grounds that the rigours of Section 17(1) had not been respected in the factual matrix of that case. Their Lordships finding was to the effect that the Lt. Governor had not properly exercised his mind on the vexed question of whether the perceived urgency justified the forfeiture of Section 5A rights.

6. A study of *Union of India -vs-* ***Krishan Lal Arneja***, AIR 2004 SC 3582, decided on 28-4-2004, i.e. prior to ***Mukesh Hans*** will disclose that their Lordships have not always drawn a distinction between the sundry sub-sections of Section 17 and on the contrary have treated Section 17 of the Act as a compendium for regulating the emergency powers of acquisition of land. In ***Krishan Lal Arneja*** also, the challenge was to the existence of sufficient material justifying the invoking of Sections 17(1) and (4) in the Notification under Section 4(1) read with Section 17 (1). It will bear repetition that the first sub-section permits dispossession after fifteen days where the appropriate Government is subjectively satisfied of the existence of urgency. The second sub-section spells out, in minute details as it necessarily should, the circumstances in which the appropriate Government can take possession of acquired lands merely after forty eight hours (virtually immediate for all practical purposes). Neither of these provisions make any mention of Section 5A of the Act. Their Lordships observed as follows:

> "17. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers

cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a land owner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under section 5A of the Act could be completed. In other words, if power under section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in

> accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority, while applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration."

7. These decisions may be of no avail to the Respondents if the arguments that Orders under Section 17(4) are essential have not been raised earlier. Therefore, whether there was, in fact, urgency in the matter has not been assailed by the present Petitioners. The frequently quoted opinion of the House of Lords in ***Quinn*** *v. Leathem*, 1901 AC 495 : (1900-3) All ER Rep 1 is that of Lord Halsbury, namely, that "every judgment must be read as applicable to the particular facts proved or assumed to be proved .... The other is that a case is only an authority for what is actually decides". These quotations have been reiterated in *Goodyear India Ltd. -vs- State of Haryana*, (1990) 2 SCC 71 and *State of Orissa v. Sudhansu Sekhar Misra*, AIR 1968 SC 647. In the latter case, the Court explicitly opined

that “a decision on a question which has not been argued cannot be treated as a precedent”. Their Lordships, in turn, referred back to the previous opinion in *Rajput Ruda Meha -vs- State of Gujarat*, 1980 SC 1707 in which it had similarly been stated that where an issue has neither been raised nor argued any decision by the Court, even after 'pondering over the issue in depth', would not be a binding precedent. Similar observations have been made by the Constitution Bench in *Padma Sundara Rao -vs- State of T.N.*, 2002(3) SCC 533, as is evident from the following extract:

> 9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board*, (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

We have carefully perused the judgments in ***Nandeshwar Prasad, Krishan Lal Arneja*** and ***Mukesh Hans*** and in order to ascertain whether it had been argued that a separate decision

must be taken under Sections 17(1) or (2) on the one hand, and Section 17(4) on the other; or that even if Section 17(1) or 17(2) are resorted to, Objections under Section 5A must be invited and decided before an acquisition can be completed. Our research is that these contentions had not been raised. Therefore, the dictum in ***Quinn*** assumes great significance. We will nonetheless give due deference to all the observations made by the Apex Court, even though we find from the pleadings before us, that grounds predicated on the above arguments have not been articulated in the petitions. Indubitably, these are legal contentions and we would be loathe to ignore them solely for the reason that they have not been pleaded. But this state of affairs has obviously been occasioned because of the views ventilated in ***Mukesh Hans.***

8. The scheme of the Act has already been reflected upon by the Apex Court in the precedents dealt with above. Three recent decisions rendered by Division Benches of this Court, applying the ratio in ***Nandeshwar Prasad*** and ***Mukesh Hans*** have however been appealed against and the Apex Court has ordered that - “there shall be interim stay of the High Court's order”. These are (a) *Sri Ballabh Marbles -vs- Union of India*,

117 (2005) DLT 387, (b) *Chaman Lal Malhotra -vs- Union of India*, W.P. (C) 4002/1997 decided on 8.8.2005 and (c) *Vasant Kunj Enclave Housing Welfare Society -vs- Union of India*, 2006 (89) DRJ 406. We find ourselves unable to accept the contention of Mr. Sethi that we must nevertheless follow the line of reasoning in these three cases. Had an interim stay of the orders passed therein not been granted by the Apex Court we could have either followed these judgments or recommended the convening of a Full Bench to reconsider the legal nodus. Be that as it may, it is entirely unarguable that where a Supreme Court Judgment is available it must be followed in its true tenor regardless of the pronouncement of Benches of the High Court.

9. We have had the advantage of listening to the extremely erudite arguments of several learned Counsel for the parties. We have endeavoured a meticulous study of the subject statute which is over a century in vintage, wearing the vestiges of colonial rule. Broadly stated, the law of land acquisition in India was predicated on the principle of “eminent domain” or “condemnation” or “expropriation”, a concept which could conveniently be employed when land-owners were subjects and not citizens. Black's Law Dictionary, Fifth Edition explains

"eminent domain" as "the power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character. .... eminent domain is the highest and most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity. It gives a right to resume the possession of the property in the manner directed by the constitution and the laws of the state, whenever the public interest requires it." Like Article 300A of our Constitution the American Constitution requires that just compensation must be given to the owners of the property which is taken away. Originally, ownership of property was assumed to be a fundamental right in our country, but Article 19(1)(f) has been replaced by Article 300A which proclaims that no person shall be deprived of his property save by authority of law. Reverting back, however, to the pre-independence era, in 1894 when the Land Acquisition Act came into force, the sovereign possessed untrammelled powers to expropriate the lands of its subjects. What was required of the Government was merely making public its intention to acquire land (Section 4) which empowered it to enter upon the land for its mapping etc., in the course of which, if damage was caused compensation would have to be calculated

and given (Section 5). Section 5A, which enables the filing of Objections, was absent. The Government could then, at its own sweet will and convenience, issue a declaration that it needed the land for public purposes. The Government would thereupon direct the Collector to obtain necessary orders for the acquisition of the land (Section 7) and the Collector would complete the remaining and requisite measurements (Section 8). Upto this stage the individual owner did not receive personalized attention, but this would obviously become advisable if not essential as soon as possession of his land was to be taken over and compensation for it was to be calculated and tendered. The original scheme of the Act, however, did not repose any say or right to remonstrate viz-a-viz acquisition proceedings on the owner of the land, as would be clear from a perusal of the Judgment of the Privy Council in ***Ezra*** *-vs- Secretary of State for India*, (1905) XXXII I.L.R. Calc. 605, in the context of Sections 9 and 40 of the Act:

> Now, upon the face of this enactment, there is no provision requiring or implying the presence or the knowledge of the owner of the land. The theory of the section would seem to be that the Government, through its officer, is to direct its attention to public interests, and it is significant that neither promoter, on the one hand, nor possible

> objector, on the other, is mentioned in the section. This does not imply that the officer is to disregard the existence of adverse rights, and the word "needed" implies this. But the standpoint is that of public interest, and the Government is given control of the enquiry, for this is all that is meant by its being empowered to appoint time and place; and all this derives the more significance from the fact that the Act, both in this stage and in the subsequent enquiry into value, takes the initiative out of the hands of the Company and puts it in the hands of the Government.
>
> ....
>
> That the nature of the first enquiry is in no sense litigious, and that the owners of the land are purposely ignored, as parties, is strongly shown by the anxious provisions made as regards the second enquiry for which (section 9) "public notice" is to be given calling for claims for compensation and requiring all persons interested in the land to appear at a time and place specified.

10. Section 9 of the Act has not undergone any significant change over the last century. It bestows on any person interested in the land the opportunity of personal appearance, however, but only with regard to the computation of compensation. The said sub-section (3) thereof obliges the Collector to serve notice on the

occupier also, since the Government can assume possession of the acquired land. Section 11 thereafter postulates the publication of an Award, which would become final by virtue of Section 12, whereupon the Collector became empowered to take possession of the land with the result that it would vest absolutely in the Government free from all encumbrances (Section 16). Obviously this procedure would span a number of years, during which the owner or the person interested in the land or the occupier, would not normally be dispossessed. The painfully protracted procedure of acquisition has been shortened by amendments carried out by Act 68 of 1984, enjoining that no Declaration under Section 6 shall be made after the expiry of one year from the Notification under Section 4. However, situations may well arise which would warrant and necessitate the Government to take possession of land forthwith. This is what Section 17 of the Act catered for, from the very inception. The first sub-section enables the Collector, even before an Award has been made, on the expiration of fifteen days from the publication of a Section 9 notice, to assume possession of any land. In even more pressing circumstances, dealt with in detail in the second sub-section of Section 17, the Collector retains the power to take possession of the land after the expiry of just two days, without

the owner/occupier of the land having any right to remonstrate against this extraordinary action. Such a situation would appear abhorrent to us today, but in a colonial era this would not have been looked askance at. Ironically, the decision in ***Ezra*** acted as a catalyst for bringing about widespread and welcome amendments to the statute in 1923.

11. We think it advantageous to reproduce Act XXXVIII of 1923 not only for facility of reference but also so that the sequence and impact of the alterations are comprehensively appreciated. Its Statement of Objects & Reasons took note of the fact that the Act "does not provide that persons having an interest in land which it proposed to acquire shall have the right of objecting to such acquisition and that the Government is not bound to enquire into and consider any objections that may reach them. The object of the Bill is to provide that a Local Government shall not declare, under s.6 of the Act, that any land is needed for a public purpose unless time has been allowed after the notification under s.4 for persons interested in the land to put in objections and for such objections to be considered by the Local Government".

Act No.XXXVIII of 1923

An Act further to amend the Land Acquisition Act, 1894, for certain purposes.

WHEREAS it is expedient further to amend the Land Acquisition Act, 1894, for certain purposes hereinafter appearing; It is hereby enacted as follows:-

1. Short title and commencement.--(1) This Act may be called the Land Acquisition (Amendment) Act, 1923.

(2) It shall come into force on such date as the Governor General in council may, by notification in the Gazette of India, appoint.

2. Amendment of section 4, Act I of 1894.--In sub-section (1) of section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act), after the word "locality", where it first occurs, the words "is needed or" shall be inserted.

3. Insertion of new section 5A in Act I of 1894.--After section 5 of the said Act the following heading and section shall be inserted, namely:-

"Objections.

5A. Hearing of objections.--(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be

made to the collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the Local Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Local Government on the objections shall be final.

(3) for the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act".

4. Amendment of section 6, Act I of 1894.-- In sub-section(1) of section 6 of the said Act, for the words "whenever it appears, to the Local Government" the following shall be substituted, namely:--

"when the Local Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2)".

5. Amendment of section 11, Act I of 1894.-- In section 11 of the said Act, after the words "the value of the land," the words "at the date of the publication of the notification under section 4, sub-section (1)," shall be inserted.

6. Amendment of section 17, Act I of 1894.-- To section 17 of the said Act the following sub-section shall be added, namely:--

(4) In the case of any land to which, in the opinion of the Local government, the provisions of sub-section (1) or sub-section (2) are applicable, the Local Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1).

7. Amendment of section 23, Act I of 1894.-- In clause first of sub-section (1) of section 23 of the said Act, for the words "declaration relating thereto under section 6," the words "notification under section 4, sub-section (1)," shall be substituted.

8. Amendment of section 24, Act I of 1894.--In clause seventhly of section 24 of the said Act, for the words "declaration under section 6" the words "notification under section 4, sub-section (1)," shall be substituted.

9. Amendment of section 40, Act I of 1894.-- In sub-section(1), of section 40 of the said Act, after the word"satisfied," the words "either on the report of the Collector under section 5A, sub-section(2), or "shall be inserted.

10. Amendment of section 41, Act I of 1894.--In Section 41 of the said Act,--

(a) the words "Such officer shall report to the Local Government the result of the inquiry, and, " shall be omitted; and

(b) after the word "satisfied" the following words shall be inserted, namely:--

> *"after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40."*

12. As we have already noted, the draconian nature of the Act came to the fore in ***Ezra***, resulting in an infusion of humaneness into the statute in the form of Act XXXVIII of 1923, the most far-reaching feature of which is Section 3, which now constitutes Section 5A of the Act. It enables the filing of objections to the proposed acquisition, requiring their consideration of the Collector culminating in his Report/s. The Report is the precursor of the Declaration under Section 6 of the Act. The amendment, however, had the effect of making the procedure considerably more time consuming. Section 17 automatically assumed added significance for the Government because unless the right to file Objections under Section 5A could be consumed by the Government, Section 17 would become illusory and otiose. Hence, dispensation of Section 5A was made available in terms of Section 17(4) which was simultaneously introduced by Act XXXVIII of 1923. If the annals of legislation are ignored, the interpretation of these provisions may become an anachronism.

13. In our considered opinion Section 17(4) is not a fasciculous of the Act, a sub-pandect or a self-contained code having its own realm of operation. Its sole purpose is to clarify that Sections 17(1) and (2) continue to operate as they did prior to 1923. If Section 17(4) is to function in its own field, the factual matrix attending thereto should be spelt out on the lines delineated in its preceding sub-sections (1) and (2). On a careful perusal of the provision of Section 17(4) it will be evident that it contemplates the formation of an opinion by the Government as to existence of the fact situation postulated either by Section 17 (1), thereby enabling possession to be taken over after fifteen days, or under Section 17(2) empowering the taking of similar action after only two days. Originally, neither of these provisions had Section 5A within their respective sights. Sections 17(1) and (2) predated the introduction of the rights of landowners/occupiers to object to the acquisition of their lands. Furthermore, we think it hallucinatory to visualize the taking over of possession in less than two days. We have not come across a case where a citizen is dispossessed instantaneously with the taking of a decision to acquire his land. If this is the practical reality, we are unable to conceive of a situation of such urgency as would justify or necessitate the formation of an

opinion in respect of a decision to be taken other than in the factual matrix disclosed in sub-section (1) or sub-section (2) of Section 17 (i.e. signing and executing virtually instantly) reference to which would not have been necessary if there were other and even more extreme situations (in practical terms unthinkable to us), envisaged by sub-section (4) alone. This is why we have said that Section 17(4) is not a self-contained sub-code; if theoretically there is urgency which does not brook even a delay of forty-eight hours, it should have been articulated in painstakingly minute detail, so that its abuse is safeguarded against. It is equally unrealistic to expect that Objections, which are normally numerous, can be decided in two days or even in fifteen days. The original intendment of Section 17 of the Act was merely clarified in Section 17(4) to continue even after the introduction of Section 5A, viz that in emergent situations acquisition proceedings could be concluded virtually instantly.

14. Furthermore, it would be futile to consider Objections under Section 5A after possession has been wrested away from the owner or occupier or person interested in the land, as the case may be; as inane and inconsequential as shutting the stable after the horse has bolted out of it. It will be fatal to ignore the

fact that Section 5A permits and enables any person interested in any land which has been notified under Section 4 to file objections within thirty days from the date of the publication of the Notification. If objections must necessarily be called for and entertained either under Section 17(1) or Section 17(2), the Act should have clarified that the period of fifteen days and two days mentioned in sub-Section (1) and (2) of Section 17 would commence after the period of thirty days prescribed in Section 5A. We have duly noted the use of "may" in the provision, denoting the availability of a choice, which militates against our understanding that as soon as the Government forms an opinion that conditions covered by Section 17(1) or (2) are current, dispensation of Section 5A inexorably and automatically follow. However instances are legion where "may" has been freely interchanged or used synonymously with "shall" or even "must", especially where the context of the statute so dictates. In our opinion Section 17(4) is clarificatory in nature, calculated to caution interested persons that objections would not be entertained both to the acquisition of the land and to the consequent dispossession of the owner/occupant. Otherwise, Sections 17(1) and (2) would be rendered meaningless, otiose and ineffectual. In other words, the Government has been

explicitly reminded in Section 17(4) that whenever it resorts either to Section 17(1) or Section 17(2) the consequence is the annihilation of the citizens rights enshrined in Section 5A and that therefore it must take due care and caution in doing so; and that ordinarily this procedure is to be eschewed.

15. In ***Om Prakash -vs- State of U.P.***, 1998 (6) SCC 1 their Lordships had pithily observed that they "could have appreciated the stand of the State authorities for invoking the urgency clause under Section 17(4) of the Act on the ground that when about 500 acres of land were to be acquired for further planned development of Sector 43 and other sectors of NOIDA, as mentioned in the impugned notification, hearing of objectors who might have filed written objections when there are a large number of occupants of these lands and who possess about 438 plots of land under acquisition, would have indefinitely delayed the acquisition proceedings and years would have rolled by before Section 6 notification could have been issued. Under these circumstances, the entire further development of the area would have, on the peculiar facts and circumstances of these cases, come to a grinding halt. Such a stand would have justified the subjective satisfaction of the authorities for invoking Section 17

(4) of the Act. Such satisfaction then could not have been gone behind by a court of law. But unfortunately for the respondents, such was not their case nor did they even whisper in these cases that these aspects were kept in view while dispensing with Section 5A inquiry." The Court was concerned only with the applicability of Section 17(4), and accordingly they had only to sift through the relevant material available with the appropriate Government to enable it to arrive at its subjective satisfaction about dispensing with a Section 5A inquiry.

16. We have been bludgeoned by Mr. Ravinder Sethi, learned Senior counsel appearing for the Petitioner, with a deluge of decisions, some of which are not topical. *Shyam Nandan Prasad -vs- State of Bihar*, (1993) 4 SCC 255 and *Hindustan Petroleum Corpn. Ltd. -vs- Darius Shapur Chenai*, (2005) 7 SCC 627, are of no advantage since Section17 had not been invoked. In *Munshi Singh -vs- Union of India*, [1973] 1 SCR 973 is also of no relevance since the finding was that the public purpose mentioned in the Notifications were piecemeal or were so vague as to cripple the Section 5A opportunity. The ratio of *Shri Mandir Sita Ramji -vs- Lt. Governor of Delhi*, (1975) 4 SCC 298 and *Shri Farid Ahmed Abdul Samad -vs- The Municipal*

Corporation of the City of Ahmedabad, (1976) 3 SCC 719 is that a personal hearing under Section 5A of the Land Acquisition Act is mandatory and does not depend on whether a personal hearing was requested for or not.

17. It has been contended that Section 17(1) and for this reason Section 17(2) also, refer to publication of a notice under Section 9 of the Act, and hence Section 5A has to be complied with. However, it should not be overlooked that in the original scheme of the statute Section 9 operated sans Section 5A and the land-owner had the right to be heard only in the context of the nature of his interest in the land and the determination of compensation for such interests. Whenever Section 17 has been correctly invoked the inexorable consequence is that the acquisition cannot be objected to (since Section 5A stands dispensed with) resulting in the enquiry being restricted to quantum of compensation receivable by the persons interested in the land prior to the Section 6 Declaration. This position would endure even post the invocation of Section 17 of the Act. An award would then be published in accordance with law and procedure. No anomalous or contradictory situation is reached if our analysis is accepted.

18. In *Narendrajit Singh -vs- The State of U.P.*, 1970 (1) SCC 125, Notification dated 15.10.1960 under Section 4(1) of the Land Acquisition Act together with Section 17 (1) and (4) was struck down as it was found to suffer from serious defect, in that the locality of the land was not specified. The Notification merely showed that the lands mentioned in the schedule were needed, and the latter gave no particulars of the District, Pargana, Mauza and approximate area. Their Lordships further observed that if the intention of the Legislature was that in cases of urgency Notification under Section 4(1) was not necessary, suitable provision would have been made in Section 17 for that purpose. The very same parties were before the Hon'ble Supreme Court in *Narendrajit Singh -vs- State of UP*, 1973 1 SCC 157 and a Notification dated 15.10.1960 under Section 4 of the Act was quashed holding that the two conditions had not been satisfied viz. the Notification had not been published and its substance had not been properly disclosed. *State of Mysore -vs- Abdul Razak Sahib*, (1973) 3 SCC 196 and *Collector (District Magistrate) Allahabad -vs- Raja Ram Jaiswal*, (1985) 3 SCC 1 are also irrelevant for our purposes since in that case Section 4 Notification appears not to have been given due publicity in the

concerned locality, thereby seriously curtailing the opportunity of interested persons to file objections under Section 5A. In *Madhya Pradesh Housing Board -vs- Mohd. Shafl*, (1992) 2 SCC 168 the public purposes stated in the Notification under Sections 4 and Section 6 were different leading to the conclusion by the Court that non application of mind was manifestly obvious. This case also has no relevance whatsoever. There is no quarrel before us as to the proposition reiterated by their Lordships in *R.L. Jain -vs- DDA*, (2004) 4 SCC 79 that publication of a notice under Section 4(1) of the Act is a *sine qua non* for any proceedings under the Act; it constitutes the springboard for such action. Possession taken prior to the Section 4 Notification was held to be illegal even in circumstances where Section 17(1) had been invoked. The decision in *Competent Authority -vs- Barangore Jute Factory*, JT 2005 10 SC 50 has also been relied upon by the Petitioners. Their Lordships came to the conclusion that the acquisition could not be defended only on the ground that plot numbers of the land in question of each Mouza had been given since different pieces of land had been acquired either as a whole or in part. The Notification failed to disclose the exact particulars of the lands which were to be lost by the owners/occupiers. Their Lordships further observed that the

absence of a plan renders the right to file objections nugatory as it was not possible to ascertain which part of the acquired land was to be used and in what manner. In spite of arriving at this conclusion the Apex Court held that since the project had already been completed no useful purpose would be served in striking down the acquisition proceedings even though this may not have been legally justified. Instead their Lordships determined a date on which the market value was to be ascertained, which was much later than the date of the Notification, which roughly corresponded to Section 4 of the Act). By this device equitable relief was extended to the owners/occupiers of the land.

19. The conclusion that we have arrived at as a result of the above discussion is that Section 17, as a composite whole, is a pandect within the Land Acquisition Act, in much the same manner in which Section 25B of the Delhi Rent Control Act has been viewed by the Hon'ble Supreme Court. Section 17 deals with the entire spectrum of emergencies which call for urgent action leading to expropriation of private property. It empowers the State to take possession of lands required for public purposes in two categories of contingencies – (a) in urgent circumstances

as adumbrated in the first sub-section enabling dispossession after fifteen days and (b) situations specifically spelt out in the second sub-section empowering immediate dispossession, i.e. after two days. These provisions were available to the State from the very inception of the Act, and had the result of permitting the Government to take possession along with the publishing of a notification under Section 4, leaving the matter of computing and tendering compensation to follow. The introduction in 1923 of the right to file Objections under Section 5A within thirty days of the Section 4 Notification required necessary clarification that where circumstances obtain necessitating urgent action, it could be taken. This was clarified by the simultaneous inclusion of Section 17(4), which notably does not have its own field of operation, distinct of sub-sections (1) and (2). Therefore, once the Government is subjectively satisfied that circumstances chronicled in the first two sub-sections exist, the effect is the suspension of the right to file Objections under Section 5A. In the present case Section 17(1) has been resorted to, it would not be open to the Authorities to take possession of the property till the expiration of fifteen days from the publication of the Notification. We have come to this conclusion respectfully and humbly mindful of observations made by their Lordships in

Nandeshwar Prasad, ***Krishan Lal Arneja*** and ***Mukesh Hans***, in which cases the argument that separate orders under Section 17(4) are essential, were not raised.

20. Proceeding on the basis that no legal impropriety or infirmity has been committed in failing to make a mention of Section 17(4) of the Act, the controversy is still not set at rest. This is because it is axiomatic and uncontrovertable that the Lt. Governor must, on the basis of material available in the records placed before him, arrive at a soundly considered and informed decision that such grave urgency exists as justifies overriding the basic rights of the land owners, which partake the character of fundamental rights. In *State of Punjab -vs- Gurdial Singh*, AIR 1980 SC 319 it has been observed that - “it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and preemptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing, land acquisition authorities should not, having regard to Article 14 & 19 of the Constitution of India,

brook an inquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency powers." It is also trite that the attitude of the Administration should be neither cavalier nor casual (*Dora Phalauli -vs- State of Punjab*, (1979) 4 SCC 485). While we prefer not to get bogged down by the semantics and syntax of Section 17, we are unwilling to dilute the stringent rigours which must be satisfied before the circumvention of Section 5A passes judicial muster.

21. Learned counsel for the Respondents have sought to make submissions before us which were patently not in the mind of the Lt. Governor at the relevant time. Everyone must confine oneself strictly to the records of those proceedings. If authority is required for this proposition it can be found in the celebrated decision in *Mohinder Singh Gill -vs- The Chief Election Commissioner, New Delhi*, AIR 1978 Supreme Court 851 paragraph 8 of which reads as follows:

> "8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

> Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18):
>
> > "Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".
>
> Orders are not like old wine becoming better as they grow older.

In similar vein, in *Babu Verghese -vs- Bar Council of Kerala*, (1999) 3 SCC 422, the Apex Court was called upon to consider a case under the Advocates Act. While doing so it applied the same principles earlier enunciated in *Taylor -vs- Taylor*, (1875) 1 Ch D 426 and in *Nazir Ahmad -vs- King Emporer*, AIR 1936 Privy Council 253. The Apex Court observed as follows:

> "It is the basic principles of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule traceable to the decision in

Taylor Vs. Taylor which was followed by Lord Roche in Nazir Ahmad Vs. King Emperor."

22. In an effort to justify the brevity of the approval accorded by the Lt. Governor Mr. Sanjay Poddar, learned counsel appearing for the LAC, has drawn our attention to the sixteen Guidelines issued pertaining to the manner in which noting should be written in Govt. Departments, which stipulate inter alia that – (1) All notes will be concise and to the point. Lengthy notes are to be avoided, (2) The verbatim reproduction of extracts from or paraphrasing of the paper under consideration, fresh receipt, or any other part of correspondence or notes on the same file, should not be attempted, (3) When passing orders or making suggestions, an officer will confine his note to the actual points he proposes to make without reiterating the ground already covered in the previous notes. If he agrees to the line of action suggested in the preceding note, he will merely append his signature and (4) Any officer, who has to note upon a file on which a running summary of facts is available till, in drawing attention to the facts of the case, refer to the appropriate part of the summary without repeating it in his own note etc. Based on these Guidelines it is his submission that the Court should look

upon the brevity in the notings with elasticity. It is also his submission that it is not essential to pass a reasoned order; if on a perusal of record it is evident that the decision was predicated on information placed before the Lt. Governor, which he duly took into consideration, the final order should not be interfered with. In *Union of India -vs- Praveen Gupta*, (1997) 9 SCC 78 their Lordships have opined that the "decision on emergency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with the enquiry under Section 5A in exercise of power under Section 17(4)". The contention is that the Legislature has taken care to speak only of the necessity of `formation of an opinion', in Section 17(4) of the Act and if this exercise and conclusion is discernible, the action should be upheld. Mr. Poddar has underscored that a format for Section 17 action has not been prescribed.

23. Mr. Sethi and Mr. Bansal, learned counsel for the Petitioners, have contended that since the Lt. Governor has refrained from mentioning Section 17(4) in his approval, even

though it had been specifically mentioned in the notes and the draft Notification placed before him, it is uncontrovertable that his intention was that Section 5A should not be dispensed with. This argument we have already rejected. The Petitioners assert that possession of the acquired lands actually remains with them, although the records indicate otherwise. The Petitioners are running industrial or commercial businesses on the subject land which are their only source of income and livelihood. On 6.5.1992 the DDA is stated to have issued a Notification under Section 12(1) of the Delhi Development Act, declaring certain areas which include the lands in question, to be Development Area No.175. On 16.12.1996 Development Area No.175 was renotified with certain modifications and redesignated as Development Area No.179. Meanwhile, on 27.10.1999 a Notification invoking the provisions of sub-section (1) of Section 4 together with sub-sections (1) and (4) of Section 17 was issued, thereby forfeiting the Petitioners' rights to file Objections under Section 5A of the Act. It has further been submitted that on 29.11.1999 the Sahbad Daulatpur Industries Welfare Association, of which the Petitioners are members, represented to the Government that the lands sought to be acquired have been built upon. Whilst the Government was considering the regularisation

of unauthorised colonies, steps to acquire the land of the Petitioners has been initiated. We must immediately and categorically state that we are not aware of any legal embargo against the acquisition of land that has been built upon; although normally, the Government avoids such action. It is equally a legal misnomer that colonies which are likely to be regularised cannot be acquired. Regularisation and acquisition of land and property are two distinct actions and cannot be confused or merged with each other. The following observations of the Full Bench from ***Roshanara Begum*** *-vs- Union of India*, AIR 1996 Delhi 206, approved in *Murari -vs- Union of India*, (1997) 1 SCC 15 scotch speculation on this issue:-

> 145. We are of the view that reasoning given by the Division Bench in this judgment is quite sound and does not call for any interference by us. Hence, mere fact that certain areas have been built up or improved upon by the persons concerned would not in any manner vitiate the acquisition proceedings.
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> 146. In case of Gandhi Grah Nirman Sahkari Samiti Ltd. (AIR 1994 SC 2329) (supra), one of the contentions raised was that the land sought to be acquired is already being used for public purpose and has been properly developed and thus the notifications issued for acquisition of such land for public purpose be quashed. The Supreme Court held that once it is clear that the

> acquisition is for public purpose, no fault can be found with the proceedings on the ground that land is already being used for some beneficial purpose. So, even if some land has been developed by the land owner according to his own notions and may be the construction raised by him on the said land is also serving some public purpose, still that cannot be a substitute for planned development of Delhi which object is visualised by the authorities. If the public object for which the land is sought to be acquired by the authorities is justified, it cannot be frustrated because the land owner has developed the land and is utilising the land for some other public purpose. So, this contention also does not survive in view of the law held down by the Supreme Court.

24. On 3.4.2000 a Declaration under Section 6 was issued, which according to the Petitioners, was without due publicity, with the result that the Petitioners were unaware of its passing.

25. The important question that must be answered is whether the decision of the Lt. Governor to dispense with Section 5A, thereby forfeiting the Petitioners valuable rights of filing Objections and remonstrating against the acquisition, has been properly taken. It cannot possibly be over-emphasised that such

a decision must be taken with due caution, with even greater care than while deciding Objections under Section 5A. Judicial review of such decisions would entail a jural investigation as to whether there was adequate material before the Authority concerned and whether the outcome was predicated on cogitation centred on such material. Courts will be loathe to substitute the subjective satisfaction of the Authority with their own. Before Section 5A Objections are disposed of, the Objectors must be given an opportunity of being heard. In the present case it is palpably clear that the Lt. Governor had looked into the ambit of Section 17(1) of the Act, and finding that the circumstances postulated therein exist, had approved of the draft Notification which clarified that the provisions of Section 5A would not apply. We do not need to locate a reasoned order so long as the impugned administrative decision appears to have been taken on the basis of the material available on the record. It has been faintly argued that keeping in view the hiatus between the Section 4A Notification (27-10-1999) and the Section 6 Declaration (3-4-2000) the Respondents could easily have invited Objections under Section 5A and disposed-off them within a few months. In our opinion, even though it is legally permissible for a Section 4 read with Section 17 Notification, to

be followed the next day by Section 6 Declaration, the time that has elapsed between the two, in the present case, is not inordinately long. The Respondents have not displayed a lack of urgency which would render the decision to bye-pass Section 5A as colourable conduct.

26. The Section 4 Notification dated 27-10-1999 proclaims that the lands mentioned therein are "likely to be required to be taken by Government at public expense for a public purpose namely Rohini Residential Scheme, Delhi". We have also noted that the Notification spells out in minute details particulars of the lands which were within the contemplation of that Notification. We make this observation for the reason that , quite inexplicably, other Notifications under Section 4 are painfully bereft of necessary details. Keeping in view the plethora of precedents requiring sufficient details of the locality which is a subject matter of an acquisition we can suspect that failure by Government to give full details is not merely bureaucratic obduracy but may be calculated eventually to defeat the acquisition. It will be recalled that in ***Mukesh Hans*** the Court did not approve of the dispensing with Section 5A. Their Lordships looked into the material available before the Lt.

Governor for formation of an opinion on this far-reaching question. The Hon'ble Court noted the absence of “any material on record to show that either the said festival has been discontinued for want of land or the owners of the land where the festival has its concluding ceremony are preventing the utilisation of the land for the said purpose”. Their Lordships further noticed that the “earlier attempt to acquire 40 bighas of land for the very same purpose was allowed to be lapsed” which is a relevant factor for taking a decision in the context of Section 5A. In *Union of India -vs- Deepak Bhardwaj,* 2004(72) DRJ 476 the Court was of the view that the subject schemes for improvement of facilities and amenities in rural areas did not suggest emergencies or urgencies sufficient to invoke Section 17 and dispense with Section 5A. In *Om Prakash -vs- State of U.P.,* 1998 (6) SCC 1 the Hon'ble Supreme Court disallowed waiver of Section 5A in order to set-up the New Okhla Industrial Development Area (NOIDA). In *Nandeshwar Prasad -vs- The State of U.P.,* [1964] 3 SCR 425 the attempt to circumvent Section 5A for construction of subsidised industrial tenements was thwarted by the Apex Court. The factual matrix in *Sarju Prasad Sinha -vs- The State of U.P.,* AIR 1965 SC 1763 was that pursuant to a June 1955 Notification under Section 4, Objections

under Section 5A had been entertained; Officer in his Report recommended that the subject land be exempted from acquisition and the proposal was abandoned. But in November, 1960 a fresh notification under Section 4(1) was issued, this time dispensing with Section 5A. Expectedly, this attempt was rendered futile by the Supreme Court.

27. In *Praveen Jain -vs- UOI*, 2002(99) DLT 646 the Division Bench presided over by S.B. Sinha, Chief Justice, as his Lordship then was, pointed out that the official notings showed that the possession of the land was not required to be obtained on an emergent basis and that the idea of invoking Section 17 was "the brain child of the Office Superintendent of the Land Acquisition Department whence for the first time he directed Shri Kwatara to type draft notification under Sections 4, 6 and 17 (1) of the Acquisition Act. Even at that point of time there was no material to show that the provisions of Sections 17(4) of the Act was required to be invoked". A piquant situation had arisen before the Full Bench of this Court in *Smt. Ram Rakhi -vs- Union of India*, 2002 V AD (Delhi) 572. While hearing a criminal writ petition the Division Bench had directed the DDA to take steps urgently to acquire the land in question and further directed

them to take possession thereof and hand it over to the Police Authorities with a view to providing access to the Krishna Nagar Police Station. Predicated on these directions a Notification under Section 4 read with Section 17(1) and Sections 17(4) was issued. On a challenge laid by the owner of the land it was held by the Full Bench, again presided over by S.B. Sinha, Chief Justice, as his Lordship then was, that the records did not show that there had been any independent application of mind. The Notification was accordingly set aside, thereby rendering the directions of the Division Bench nugatory. This decision highlights the fact that the Courts have always zealously guarded and preserved the rights of the land owners to object to the acquisition of their lands without due process of law being adhered to by the appropriate Authority. In *Union of India -vs- Krishan Lal Arneja*, AIR 2004 SC 3582 fourteen properties were notified for acquisition under Section 4 and Section 17(1) and Section 17(4) of the Act which action was struck down by this Court. The Appeal of the UOI was dismissed by the Hon'ble Supreme Court. The properties were requisitioned under the provisions of Defence of India Rules and the provisions of Requisitioning and Acquisition of Immovable Property, 1952 were to be lapsed in March, 1987. Their Lordships opined that

the UOI had almost two years to acquire these properties by pursuing the usual remedies, without depriving the respondents of their valuable rights to file Objections against the acquisition. Invocation of the Urgency Clause was held to be without justification. The Full Bench of this Court in *S.K. Gupta -vs- Union of India*, AIR 1977 Delhi 209 noted the absence of even a recital that there was urgency in the matter, leaving unfulfilled even the perfunctory discharge of the burden of proof. In *Narayan Govind* ***Gavate*** *-vs- State of Maharashtra*, AIR 1977 SC 183 the Section 4 and Section 17(4) Notification dated 11.10.1963 recited the public purpose as "development and utilisation of the said land as a residential and industrial area". Their Lordships held that the burden of proof lay on the State of Maharashtra, and that it had not been satisfactorily discharged. Their Lordships then affirmed that at least a subjective opinion had to be formed regarding the need to take action under Section 17(4) of the Act but this exercise had not been satisfactorily and sufficiently undertaken. It was opined that development of an area for industrial and residential purposes, on the face of it, barring exceptional circumstances, did not justify taking immediate possession of the land without holding any summary inquiry under Section 5A of the Act. "On the other hand, such

schemes generally take sufficient period of time to enable summary inquiries under Section 5A to be completed without any impediment whatsoever to the execution of the scheme. Therefore, the very statement of the public purpose for which the land was to be required indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an inquiry under Section 5A of the Act". Remarkably, the decision of the Supreme Court of three-Judge Bench titled ***Munshi Singh*** *-vs- Union of India*, (1973) 2 SCC 337 = AIR 1973 SC 1150 had not been cited before their Lordships. In ***Munshi Singh*** Section 17 had not been resorted to. Even then the statement of public purpose and the Notification viz. "planned development of the area" was found not to be sufficiently satisfactory to enable the exercise of rights under Section 5A. It must be mentioned that ***Gavate*** has not found favour by larger Benches of the Apex Court in *State of UP -vs- Pista Devi*, (1986) 4 SCC 251 ***Chameli Singh*** *-vs- State of U.P.*, 1996 (2) SCC 549 and *Deepak Pahwa -vs- Lt. Governor of Delhi*, (1984) 4 SCC 308.

28. While there are several decisions in additions to those briefly dealt by us above striking down the wield of Section 17 to nullify the rights contained in Section 5A, on the other side

of the watershed there are a few precedents where this approach has not met with the disapproval of the Court. We cannot lose sight of the fact that there is a Constitutional confirmation that no person shall be deprived of his property save by authority of law. The following concise exposition of the law is available in ***Chameli Singh*** :

> 15. The question, therefore, is whether invocation of urgency clause under Section 17(4) dispensing with inquiry under Section 5-A is arbitrary or is unwarranted for providing housing construction for the poor. In Aflatoon v. Lt. Governor, Delhi, (1975) 4 SCC 285 a Constitution Bench of this Court had upheld the exercise of the power by the State under Section 17(4) dispensing with the inquiry under Section 5-A for the planned development of Delhi. In Pista Devi case, this Court while considering the legality of the exercise of the power under Section 17(4) exercised by the State Government dispensing with the inquiry under Section 5-A for acquiring housing accommodation for planned development of Meerut, had held that providing housing accommodation is national urgency of which Court should take judicial notice. The pre-notification and post-notification delay caused by the officer concerned does not create a cause to hold that there is no urgency. Housing conditions of Dalits all over the country continue to be miserable even till date and is a fact of which courts are bound to take judicial notice. The ratio

of Deepak Pahwa's case (supra) was followed. In that case a three-Judge Bench of this Court had upheld the notification issued under Section 17(4), even though lapse of time of 8 years had occurred due to inter-Departmental discussions before receiving the notification. That itself was considered to be a ground to invoke urgency clause. It was further held that delay on the part of the lethargic officials to take further action in the matter of acquisition was not sufficient to nullify the urgency which existed at the time of the issuance of the notification and to hold that there was never any urgency. In Jaga Ram v. State of Haryana, (1971) 1 SCC 671 this Court upheld the exercise of the power of urgency under Section 17(4) and had held that the lethargy on the part of the officers at an early stage was not relevant to decide whether on the day of the notification there was urgency or not. Conclusion of the Government that there was urgency, though not conclusive, is entitled to create weight. In Deepak Pahwa's case this Court had held that very often persons interested in the land proposed to be acquired may make representations to the authorities concerned against the proposed writ petition that is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often delay makes the problem more and more acute and increases urgency of the necessity for acquisition. In Rajasthan Housing Board v. Shri Kishan, (1993) 2 SCC 84 this Court had held that

it must be remembered that the satisfaction under Section 17(4) is subjective one and that so long as there is material upon which Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. In State of U.P. v. Keshav Prasad Singh, (1995) 5 SCC 587 this Court had held that the Government was entitled to exercise the power under Section 17(4) invoking urgency clause and to dispense with inquiry under Section 5-A when the urgency was noticed on the facts available on record. In Narayana Govind Gavate's case (supra) a three-Judge Bench of this Court had held that Section 17(4) cannot be read in isolation from Section 4(1) and Section 5-A of the Act. Although 30 days from the notification under Section 4(1) are given for filing objections under Section 5-A inquiry thereunder unduly gets prolonged. It is difficult to see why the summary inquiry could not be completed quite expeditiously. Nonetheless, this Court held the existence of prima facie public purpose such as the one present in those cases before the Court could not be successfully challenged at all by the objectors. It further held that it was open to the authority to take summary inquiry under Section 5-A and to complete inquiry very expeditiously. It was emphasised that:

> ...The mind of the Officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be

eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 5-A which has to be considered.

16. It would thus be seen that this Court emphasised the holding of an inquiry on the facts peculiar to that case. Very often the officials, due to apathy in implementation of the policy and programmes of the Government, themselves adopt dilatory tactics to create cause for the owner of the land to challenge the validity or legality of the exercise of the power to defeat the urgency existing on the date of taking decision under Section 17(4) to dispense with Section 5-A inquiry.

17. It is true that there was pre- notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry under Section 5-A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency. So long as the unhygienic conditions and deplorable housing needs of Dalits, Tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the Court, not being an appellate forum, would not disturb the finding unless the Court conclusively finds the exercise of the power mala fide. Providing house sites to the Dalits, Tribes and the poor itself is a National problem, and a Constitutional obligation. So long as the problem is not

> solved and the need is not fulfilled, the urgency continues to subsist. The State is expending money to relieve the deplorable housing condition in which they live by providing decent housing accommodation with better sanitary conditions. The lethargy on the part of the officers for pre and post-notification delay would not render the exercise of the power to invoke urgency clause invalid on that account

29. ***Chameli Singh*** was decided without reference to the earlier decision of the Supreme Court in ***Krishi Utpadan*** *Mandi Samiti, Muzaffarnagar (U.P) -vs- Ratan Prakash Mangal*, AIR 1988 SC 1459 but the following extracts therefrom will disclose the continuity of thinking of the Apex Court on this complex issue:

> 13. .... As regards the submission that Section 17(4) of the Act has been erroneously invoked in the fresh Notification under Section 4(1) dated 20th May, 1982 also and that inquiry under Section 5-A had again to be made before issuing this Notification, suffice it to point out that once an inquiry under the said Section had already been made and the parties had been given full opportunity to substantiate their case in the said inquiry and the State Government was not inclined to agree with the report of the Land Acquisition Officer submitted in pursuance of that inquiry it would have been a futile exercise to repeat the whole performance again. After the issue of the

earlier Notification dated 26th October, 1978 a period of nearly 3-1/2 years had expired when the fresh Notification dated 20th May, 1982 under Section 4(1) was issued and apparently the necessity to acquire Plot No.289 during this period became more acute due to this delay. Further, as stated in the Notification dated 20th May, 1982 itself the urgency had become more imminent on account of the direction issued by this Court on 2nd March, 1982 in Writ Petition No.1318 of 1982 filed by the traders challenging the Notification under Section 7(2)(B) of U.P. Act No.25 of 1964. Consequently, we find it difficult to hold that the opinion of the State Government that it was a fit case to invoke Section 17(4) of the Act was invalid on the ground that there was no basis or material in support of that opinion. We are further of the view that on the facts indicated above it is also not possible to hold that the Notification dated 20th May, 1982 had been issued by the State Government in colourable exercise of its power.

30. In *Balmokand Khatri Educational and Industrial Trust -vs- State of Punjab*, (1996) 4 SCC 212 the argument that urgency mentioned could have brooked a delay of thirty days was rejected since the project was earmarked for distribution to landless labour. ***Chameli Singh*** was applied and ***Gavate*** was not seen as an impediment in the waiver by the State of Section 5A by resort to Section 17 of the Act.

31. In *Sandhya Educational Society -vs- UOI*, the Division Bench of the Court has followed and applied ***Krishi Utpadan*** in upholding the legality of invocation of Section 17 of the Act where an award was not passed in respect of the subject land, although an opportunity of hearing had been granted to the owner prior to a Declaration under Section 6 of the Act.

32. Mr. Mehta, learned Senior Counsel for the DDA, has taken us through the pleadings and the Representations addressed by the Petitioners for the Release of their lands and property from the proposed acquisition. His emphasis is on the aspect of equities; that a writ petition would ordinarily not be entertained if equity is not on the side of the Petitioners. He contends that the admitted position is that the use of the area is residential, and with full knowledge thereof the Petitioners are using it for commercial or factory purposes. The Petitioners are themselves guilty of violation of the land use, thereby disentitling themselves from any discretionary relief. In fact, some of the Petitioners have gone to the extent of purchasing lands with the specific intent to put it to non-conforming use. We are of the

opinion that any party which invokes the extraordinary powers preserved to the High Court under Article 226 should not be tainted with violating the law in respect of the object in respect of which relief is prayed for in the writ petition. We would also dismiss the petitions on this ground.

33. We must record that there was no challenge to the subject acquisition on the grounds that it was not predicated on public purposes viz. planned development of Delhi as is also palpable from the Written Arguments filed on behalf of the Petitioners. The assertion of the Respondents that the land is earmarked for Phases IV and V of the rohini Residential Scheme has not been challenged. Mr. Poddar has submitted that previously a Notification under Section 4 had been issued on 4-4-1964 (in which Section 17 had not been resorted to) followed by a Declaration under Section 6 on 7-12-1966. The challenge laid to these proceedings ended with the decision in ***Roshanara Begum***, but since Award could not be passed within the statutory period, the acquisition lapsed in regard to those lands. Hence the need to proclaim the second and subject acquisition proceedings. The Respondents have progressed with apparent speed and urgency since the Notification under Section 4 read

with Section 17 was issued on 27-10-1999; followed by Declaration under Section 6 on 3-4-2000. The present petitions came to be filed as a fallout thereto in May 2000 and owing to interim orders passed by this Court the development plans perforce had to be temporarily halted.

34. We shall now endeavour to apply the law to the facts of the case. The statute enjoins the formation of an opinion by the appropriate Government to the effect that the prevailing circumstances are of such urgency that the acquisition proceedings can proceed directly to the promulgation of a Declaration under Section 6, thereby annihilating the valuable rights of remonstrating against the expropriation. The subjective satisfaction is that of the appropriate Government which need not be articulated in precise words; it would suffice if the subjective satisfaction is discernible by the Courts exercising judicial review from the material available in the records placed before the appropriate Government at the time when the opinion is formed. Extraneous considerations, not in the mind of the appropriate Authority, must be excluded. The most fundamental factor is the prevalence of public purpose; which issue Mr. Sethi has not assailed at all. If this susceptible question had been worthy of

discussion Mr. Sethi would have raised the debate. General principles of procedural law, as expressed inter alia in Order II of the Code of Civil Procedure, 1908, preclude truncated or piecemeal deliberation of issues which have already arisen. Nevertheless, we have perused the proceedings and discussion that have taken place at different echelons of the appropriate Government, as gleaned from the notings and correspondence on the subject. We find that there was abundant material available for forming a subjective opinion that public purpose would be subserved through the acquisition, and that there was sufficient urgency in invoking the provisions of Section 17 valuable but not unalienable of the Act fully mindful that the consequence was the deprivation of the rights of persons having an interest in the land of filing Objections under Section 5A of the Act. Resistence to public projects arises when the Government attempts to circumvent its duty to pay the realistic compensation for acquired land. When the motivation of the Government is predicated on profit derivation the action can be seen as mala fide or devoid of public purpose. Corrective steps can be found by enhancing compensation. Equally, we would be loathe to assist persons from unjustly enriching themselves by earning compensation beyond the date of the Section 4 Notification by adopting a

sophistic approach which locates semantic shortcoming while ignoring the genuine purpose of the appropriate government . The pendency of these writ petitions has caused undue delay in the completion of a salutary public project, and we would ordinarily have burdened the petitioners with exemplary costs. We, however, desist from doing so.

35. The writ petitions are devoid of merit and are dismissed. All interim Orders are recalled. A copy of this Judgment be placed by the Registry in all the connected matters.

(VIKRAMAJIT SEN)
JUDGE

July 9, 2007
n/tp

(J.P. SINGH)
JUDGE